

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

LLOYD VAN SHAWN DOWNING (#1180554)

Petitioner,
v. CIVIL ACTION NO. 2:20cv146

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges the violation of Petitioner's constitutional rights pertaining to his 2004 convictions and sentencing in the Accomack County Circuit Court for aggravated malicious maiming, robbery, and use of a firearm in the commission of a felony. As a result of the convictions, Petitioner was sentenced to prison serve a term of life on the robbery conviction, twenty years on the aggravated malicious maiming conviction, and five years on the firearms conviction, with each sentence to run consecutively.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation recommends dismissal of the petition with prejudice. The Report and Recommendation advised each party of his right to object and the time limit for doing so. The Court has received no objections, and the time for filing objections has now expired.

Accordingly, this Court accepts the findings and recommendations set forth in the Report and Recommendation and it is ORDERED that Respondent's Motion to Dismiss (ECF No. 15) is GRANTED, and that Mr. Downing's petition is DENIED and DISMISSED with prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/

Arenda L. Wright Allen
United States District Judge

March 1, 2021
Norfolk, Virginia